

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

**IN THE MATTER OF:**

<b>AMENDS 312 IAC 4-5-2 TO ADD A</b>	)	<b>Administrative Cause</b>
<b>CONSERVATION OFFICER PREREQUISITE</b>	)	<b>Number: 14-144L</b>
<b>CLARIFICATION</b>	)	
	)	
	)	<b>LSA Document #15-343(F)</b>

***AMENDED***  
**REPORT ON RULE PROCESSING, PUBLIC HEARING, AND HEARING OFFICER  
ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION**

**1. RULE PROCESSING**

For consideration as to final action, is the proposed amendment to 312 IAC 4-5-2 to clarify that a conservation officer applicant's four years of full-time active duty United States military service with honorable discharge satisfies as a prerequisite.

The Natural Resources Commission (the "Commission") gave preliminary adoption to the proposed amendments on May 19, 2015. As reported in the pertinent portions of the May minutes:

**Consideration of preliminary adoption of amendments to 312 IAC 4-5-2 to clarify that a conservation officer applicant's four years of full-time active duty United States military service with honorable discharge satisfies as a prerequisite; Administrative Cause No. 14-144L**

Col. Danny East, Director of the DNR, Division of Law Enforcement, presented this item. He explained that 312 IAC 4-5-2(3)(c) currently provides that "four years of honorable United States military service" would satisfy the education prerequisite. East said the proposed amendment to 312 IAC 4-5-2 is "clean-up language" to clarify that a conservation officer candidate's four years of full-time active duty United States military service with honorable discharge satisfies as a prerequisite for a conservation officer application. He said the DNR Director approved an emergency rule, LSA Document #14-449(E), which is similar to the "cleanup language" and will be in effect until the instant rule proposal becomes permanent.

Robert Wright moved to approve for preliminary adoption amendments to 312 IAC 4-5-2 to clarify that a conservation officer applicant's four years of full-time active duty United States military service with honorable discharge satisfies as a prerequisite for a conservation officer application. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

Joseph Hoage, Chief Legal Counsel for the Department of Natural Resources ("DNR") submitted to the Office of Management and Budget ("OMB") requests for "exemption to the suspension of rulemaking action under the provisions of Executive Order 13-03". In a letter dated October 27, 2014, Christopher D. Atkins, Director of OMB, wrote that "DNR's request qualifies for an exception under Section 6(a) and (b) of Executive Order 13-03. Therefore, DNR may proceed..."

The "Notice of Intent" to adopt the rule amendments was published in the INDIANA REGISTER at 20151014-IR-312150343NIA on December October 14, 2015. The notice identified Lt. Col. Steve Hunter, with the Division of Law Enforcement, as the "small business regulatory coordinator" for purposes of IC 4-22-2-28.1.

The Commission caused the information required by IC 4-22-2-22.5 to be included in the rulemaking docket maintained on its website at <http://www.in.gov/nrc/2377.htm>.

As specified by the Executive Order that then applied, proposed fiscal analyses of the rule proposal, and the rule standards analysis under IC 4-22-2-19.5 were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to OMB and the Legislative Council on October 14, 2015. On November 23, 2015, the Commission received an approval letter from Brian E. Bailey, Director of the State Budget Agency, which stated, in part, "After reviewing the proposed rule, the recommendation of the State Budget Agency is that the rule changes be approved."

On November 23, 2015, the Division of Hearings submitted the proposed rule to the Legislative Services Agency ("LSA"), along with the "Statement Concerning Rules Affecting Small Business" (also known as the "Economic Impact Statement" or "EIS"). The Notice of Public Hearing and the Justification Statement (IC 4-22-2-24(d)(3)) were submitted to LSA on November 25, 2015. On December 9, 2015, the following were posted to the INDIANA REGISTER: the text of the proposed rule (20151209-IR-312150343PRA); the notice of public

hearing (20151209-IR-312150343PHA); and the Economic Impact Statement (20151209-IR-312150343EIA). Following receipt from LSA of an “Authorization to Proceed”, the Division of Hearings caused Notice of Public Hearing to be published on December 4, 2015 in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County, Indiana.

The Statement Concerning Rules Affecting Small Businesses (the “EIS”), as required under IC 4-22-2.1-5, and submitted by the Small Business Regulatory Coordinator, indicates:

**Economic Impact Statement**  
LSA Document #15-343

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses**

**Estimated Number of Small Businesses Subject to this Rule:**

This rule will not have an effect on small businesses as the rule is internal to the procedures and administration of the Department of Natural Resources Division of Law Enforcement.

**Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:**

There are no reporting, record keeping, or other administrative costs to small businesses as a result of this rule.

**Estimated Total Annual Economic Impact on Small Businesses to Comply:**

No economic impact is expected or anticipated as a result of this rule.

**Justification Statement of Requirement or Cost:**

There are no additional requirements or costs imposed on small businesses as a result of this proposed rule. This is a no cost–no intrusion rule as it relates to small businesses. The rule proposal has no requirements, schedules, or deadlines as it relates to small businesses, and does not have any compliance or performance standards for small businesses.

**Regulatory Flexibility Analysis of Alternative Methods:**

Not applicable.

## **2. PUBLIC HEARINGS**

The January 4, 2016, public hearing was convened as published. Col. Danny East from the DNR, Division of Law Enforcement attended the public hearing. No other member of the public was in attendance. The public comment period closed at the end of January 4, 2016. The close of the public comment period was also posted on the Commission’s online rule docket at <http://www.in.gov/nrc/2377.htm>. No public comments were received at this public hearing.

On February 29, 2016, the Attorney General's Office requested the Commission recall LSA Document #15-343(F) due to noncompliance with IC 4-22-2-22.5(d)(6), which requires information regarding the public hearing be posted to the agency's rulemaking docket found at <http://www.in.gov/nrc/2377.htm>. On March 9, 2016, the Notice of Recall was posted to the Indiana Register at 20160309-IR-312150343RCA. Also, on March 9, 2016, a Notice of Change of Public Hearing was posted to the Indiana Register at 20160309-IR-312150343CHA. A notice of the public hearing was also published on March 9, 2016 in the *Indianapolis Star*, a newspaper of general circulation in Marion County, Indiana. The rulemaking docket was also updated to include the public hearing information in accordance with IC 4-22-2-22.5(d)(6). The rulemaking docket was periodically updated as the rule adoption progressed.

The April 4, 2016, public hearing was convened as published. Col. Danny East from the DNR, Division of Law Enforcement attended the public hearing. No other member of the public was in attendance. The public comment period closed at the end of April 4, 2016. The rulemaking docket reflected the comment period deadline.

### **3. HEARING OFFICERS ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION**

The Commission gave final adoption to this rule proposal at its January 19, 2016 meeting. The following is an excerpt from the meeting minutes:

**Consideration of report of rule processing, public hearing, and hearing officer analysis with recommendation regarding final adoption of amendments to 312 IAC 4-5-2, which provides prerequisites for a conservation officer applicant; LSA Document #15-343(F); Administrative Cause No. 14-144L**

Jennifer Kane, Hearing Officer, presented this item. She explained that the rule proposal would amend 312 IAC 4-5-2, which governs the prerequisites for applicants to the Department of Natural Resources conservation officer program. Kane noted that the rule section was amended in 2014; however, upon further review, it was determined that additional amendment was required in order to clarify the qualification of an applicant's United States Military Service as a prerequisite. "The individual must have served full time, active-duty and received an honorable discharge." Kane recommended final adoption of the rule amendment at 312 IAC 4-5-2(3)(C).

Cameron Clark moved to approve for final adoption the amendments to 312 IAC 4-5-2, which governs the prerequisites for a conservation officer applicant. Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

However, due to the recall of the proposed rule, LSA Document #15-343(F) is re-presented for final adoption. No comments were received as a result of the April 4, 2016 public hearing, and the analysis, as presented to the Commission at its January 2016 meeting, remains relevant.

312 IAC 4-5-2 was amended in 2014; however, after further review, it was determined that existing language at 312 ICA 4-5-2(3)(C) regarding military qualifications required additional amendment. The proposed amendment clarifies that a veteran who has completed four years (full-time) honorable military service would be eligible to apply to the Department of Natural Resources, Division of Law Enforcement conservation officer program.

The Director of the Department of Natural Resources renewed an emergency rule, LSA Document #15-379(E), effective November 13, 2015 and published at 20151111-IR-312150379ERA. The emergency rule clarifies that a conservation officer applicant's four years of full-time active duty United States military service with honorable discharge satisfies as a prerequisite. If given final adoption, the proposed rule amendment, LSA Document #15-343(F), would make the temporary amendment permanent. It is recommended that the Commission give final adoption to the rule amendments as presented in "Exhibit A" as attached to this report.

Dated: April 5, 2016

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Jennifer M. Kane  
Hearing Officer

**TITLE 312 NATURAL RESOURCES COMMISSION**

**Final Rule**

LSA Document #15-343(F)

**DIGEST**

Amends [312 IAC 4-5-2](#) to clarify that a conservation officer applicant's four years of full-time active duty United States military service with honorable discharge satisfies as a prerequisite. Effective 30 days after filing with the Publisher.

**312 IAC 4-5-2**

SECTION 1. [312 IAC 4-5-2](#) IS AMENDED TO READ AS FOLLOWS:

**312 IAC 4-5-2 Prerequisites for a conservation officer applicant**

Authority: [IC 14-9-8-3](#); [IC 14-10-2-4](#)

Affected: [IC 14-9-8](#)

Sec. 2. A person who wishes to apply to become a conservation officer must meet each of the following requirements in order to be favorably considered:

- (1) Be a United States citizen.
- (2) Possess the strength and agility needed to complete the physical conditioning and psychomotor skills requirements established by the Indiana law enforcement training board under [250 IAC 2-3](#).
- (3) Have achieved one (1) of the following:
  - (A) An associate's degree (two (2) year program), evidenced by a certified transcript, from a college or university accredited by an organization recognized by the United States Secretary of Education at 34 CFR 602.2.
  - (B) Completion of at least two (2) years toward a bachelor's degree (four (4) year program), evidenced by a certified transcript, from a college or university accredited by an organization recognized by the United States Secretary of Education at 34 CFR 602.2.
  - (C) Four (4) years of ~~honorable~~ **full-time active duty** United States military service **with honorable discharge**.
- (4) Be at least twenty-one (21) years of age on the date of appointment.
- (5) Possess a valid driver's license to operate an automobile.
- (6) Be willing, if appointed, to reside and serve any place within Indiana as designated by the division director.
- (7) Demonstrate an ability to:
  - (A) swim one hundred (100) yards without stopping; and
  - (B) tread water for at least five (5) minutes.
- (8) Successfully complete physical agility testing.
- (9) If requested by the division, submit to and satisfy the following:
  - (A) Standard psychological testing.
  - (B) A polygraph examination.

*(Natural Resources Commission; [312 IAC 4-5-2](#); filed Aug 3, 2001, 11:07 a.m.: 24 IR 3938; readopted filed May 29, 2007, 9:49 a.m.: [20070613-IR-312070145RFA](#); readopted filed Sep 19, 2013, 10:13 a.m.: [20131016-IR-312130170RFA](#); filed Oct 14, 2014, 3:29 p.m.: [20141112-IR-312130448FRA](#); errata filed Oct 17, 2014, 2:14 p.m.: [20141112-IR-312130448ACA](#))*